

Opinions, Advice, and Legislation Quarterly News

OPINIONS

CIVIL RIGHTS AND DISCRIMINATION

Question: A 1998 State law incorporates federal standards for forms that collect racial and ethnic information. That law directs that race be identified by the individual who is the subject of the form, or by a family member or friend, and permits a multiracial respondent to select “all applicable categories.” Do these standards apply to the racial identification of individuals who are wanted by or under the jurisdiction of the criminal justice system in Maryland?

Answer: The 1998 law applies generally to all State forms, including those used by the Department of Public Safety and Correctional Services, with two important qualifications. First, the mandate for self-identification and the option to select multiple categories do not pertain to forms that must necessarily be completed by someone other than the individual who is the subject of the form. Second, in identifying those forms to which the self-identification requirement applies, DPSCS may appropriately look for guidance to the practice of federal agencies with which it coordinates its activities.

*Opinion No. 00-005
March 7, 2000*

COUNTIES

Question: Must self-insured counties maintain no-fault personal injury protection and uninsured motorist coverage on their vehicles?

Answer: Like the State, counties that self-insure are not required to maintain personal injury protection and uninsured motorist coverage.

*Opinion No. 00-001
January 24, 2000*

ELECTIONS

Question: Would it be constitutional to use statistically adjusted census data) as opposed to the traditional head-count data) in the preparation of State legislative districts? **Answer:** Yes.

*Opinion No. 00-003
February 7, 2000*

Question: May a payroll deduction for an employee's dues payment to a professional association or a labor organization be used, in part, to fund a political action committee ("PAC") established by the association or organization?

Answer: The State election code permits an organization to make a contribution to a PAC, *in the organization's name*, up to the statutory limit of \$4,000. Such a contribution may be made from funds derived from membership dues, assuming that the organization's charter and by-laws, as well as other laws governing the organization, permit it to use its funds for political contributions.

However, the organization may not pool political contributions of individual members, because the election code requires direct contributions to candidates and PACs; the code does not permit a donor to pass a political contribution through an intermediary.

A statutory exception to this general rule permits employees to make contributions by payroll deduction and allows the employer to send these contributions to the PAC in a lump sum, with detailed information as to the source, date, and amount of each individual contribution. Such a payroll deduction must be separate from any deduction for organization dues and must be voluntarily elected by the employee.

*Opinion No. 00-004
February 11, 2000*

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HOUSING

Question: Did the Maryland Housing Fund have statutory authority to insure an equity take-out loan, when the loan allowed the owner of a low-income housing project originally financed with a State loan to receive some of its accumulated equity?

Answer: Yes.

*Opinion No. 00-002
February 7, 2000*

PUBLIC CONTRACTS

Question: Which State agency transactions involving the purchase of residential and similar human, social, cultural, and educational services constitute "procurement contracts" that trigger the lobbying provisions of the Maryland Public Ethics Law?

Answer: Most such purchases fit the definition of "procurement contract" under the State procurement law) a definition incorporated in the Public Ethics Law. There is an exception for certain transactions for which the law sets eligibility standards and price.

WORKERS' COMPENSATION

Question: When the Injured Workers' Insurance Fund ("IWIF") administers a workers' compensation claim for a self-insured employer, may it provide copies of the claimant's medical records to the employer? Is disclosure of these records subject to a State law that limits the redisclosure of medical records obtained from a health care provider?

Answer: Because IWIF acts as agent of a self-insured employer in these circumstances, it may provide claimant medical records to the employer without implicating the redisclosure provision of the medical records law. However, employees should be notified, when they authorize disclosure of their records to IWIF, that IWIF is acting as agent for the employer. The employer is subject to the same limitations on use and redisclosure of the records as IWIF is, or as the employer would be if it administered its own workers' compensation claims.

*Opinion No. 00-006
March 7, 2000*

ADVICE LETTERS

ADMINISTRATIVE HEARINGS

Question: In an appeal before the Office of Administrative Hearings, is a nursing home entitled to discovery of survey work papers and other documents used by the Department of Health and Mental Hygiene ("DHMH") to support a finding of deficiency?

Answer: No. The work papers and other documents used by DHMH during surveys of nursing homes are protected from discovery by HG §14-501, which relates to proceedings, records, and files of medical review committees.

*Letter to
Sen. Thomas L. Bromwell
March 14, 2000*

ATTORNEY GENERAL

Question: May a special attorney, who is appointed by the Attorney General to represent the Child Support Enforcement Administration ("CSEA") of the Department of Human Resources in civil child support actions in Baltimore County, also routinely initiate constructive criminal contempt cases involving child support defendants?

Answer: The Attorney General's appointment of a special attorney under FL §10-115(c)(3) authorizes the attorney to represent CSEA in civil child support proceedings. The attorney is not authorized, by virtue of that appointment alone, to initiate or prosecute criminal contempt cases.

*Letter to
Howard B. Merker
January 7, 2000*

BUDGET PROGRAM FUNDING

Question: HB 1172 requires that the Governor include funds in the State Budget for a children's literacy program. Is the bill constitutional?

Answer: There is no constitutional objection to the bill's provision that the Governor include funds in the budget to implement a children's literacy program. However, the level of funding is within the Governor's discretion.

*Letter to
Del. Sheila Ellis Hixson
March 20, 2000*

BUDGET BILL

Question: The Budget Bill includes grants to provide aid to purchase textbooks for non-public schools. Is this constitutional?

Answer: Because of the changing nature of the law in this area, and the paucity of detail in the budget item, it is difficult to render definitive advice. A program that would meet constitutional scrutiny could most likely be devised, whether by legislation or by the Department of Education, under which textbooks could be supplied to students in non-public schools. While Supreme Court decisions indicate that some sort of direct financial aid to non-public school students for the purpose of purchasing textbooks would be constitutional, programs in which textbooks are provided

directly to schools risk running afoul of the Establishment Clause.

*Letter to
Del. Michael J. Finifter
February 1, 2000*

**CLIENTS' SECURITY
TRUST FUND**

Question: Would it be constitutional to require the trustees of the Clients' Security Trust Fund to distribute a certain percentage of money in the Fund to assist in the repayment of education loans of lawyers who agree to serve low-income clients?

Answer: Yes.

*Letter to
Del. Michael F. Finifter
February 28, 2000*

COMMERCE CLAUSE

Question: Would a bill concerning the labeling of foreign crab meat be constitutional if it were amended to delete provisions directed only at foreign crab meat and to require instead that all containers of crab products, whether of foreign or domestic, be labeled as to country of origin?

Answer: If the bill is amended as proposed, it would no longer discriminate against foreign commerce in violation of the Commerce Clause.

*Letter to
Del. C. Richard D'Amato
February 14, 2000*

CONCEALED WEAPONS PAINT GUNS

Question: Does the Concealed Weapons Law apply to the transport of paint guns?

Answer: In most circumstances, transporting a paint gun would not violate the Concealed Weapons Law.

*Letter to
Sen. Leo Green
January 14, 2000*

CONSTITUTIONAL LAW

Question: If passed, would Senate Bill 374, "Divorce and Annulment) Removal of Religious Barriers to Remarriage," be constitutional?

Answer: Yes.

*Letter to
Sen. Barbara A. Hoffman
February 17, 2000*

CRIMINAL RECORDS

Question: What is the appropriate form of sentence when a defendant violates probation and is required to serve the remainder of a suspended sentence?

Answer: In accordance with an opinion of the Court of Special Appeals, the sentencing court should order execution of the unserved balance of the suspended sentence, rather than execution of the entire sentence with credit for time served. The latter form of sentence would be illegal, because it would, in theory,

entitle a defendant to diminution credits for the portion of the sentence already executed.

*Letter to
Hon. John O. Hennegan
March 22, 2000*

**GENERAL ASSEMBLY
ETHICS**

Question: During the legislative session, may a member of the General Assembly solicit contributions for, or sell tickets to a fundraiser for, a candidate for Congress?

Answer: During the legislative session, a member is prohibited from soliciting contributions for, or selling tickets to a fundraiser for a congressional candidate. However, an exception to that prohibition allows a member who is running for federal office to solicit contributions for the member's own federal campaign.

*Letter to
William J. Somerville
January 12, 2000*

Question: House Bill 1157 would eliminate six legislators from the twelve- member Joint Committee on Legislative Ethics and add six citizen members. Would it be constitutional?

Answer: House Bill 1157 raises serious problems involving the legislative privileges embodied in the Maryland Constitution and also might be found to transfer power from elected constitutional officers to appointed statutory officers, in apparent violation of the Court of Appeals' decision in *Murphy v. Yates*. However, if the bill were amended to make the actions of the public members purely advisory, and to eliminate any outside intrusion on legislative privilege, these problems could be avoided.

*Letter to
Del. Joan Breslin Pitkin
February 10, 2000*

HANDGUNS

Question: Does the term "integrated mechanical safety device" in the Responsible Gun Safety Act of 2000 include existing, common handgun safety features?

Answer: The term "integrated mechanical safety device" applies to sophisticated gun safety technology such as trigger locks, not to common safety features such as lateral safety levers and grip safety devices currently included in handguns.

*Letter to
Sen. Christopher Van Hollen
March 28, 2000*

HEALTH

Question: Does the Maryland Institute for Emergency Medical Services Systems have authority to provide by protocol for pediatric do-not-resuscitate orders?

Answer: Yes.

*Letter to
Robert H. Bass
March 10, 2000*

INCOME TAX

Question: Does the State income tax exclusion for pension income cover distributions from deferred compensation and 401(k) plans?

Answer: Although State law does not define the term “pension” for purposes of this exclusion, the Comptroller’s conclusion that it covers distributions from deferred compensation and 401(k) plans is a reasonable interpretation of the law.

*Letter to
Del. Leonard Teitelbaum
February 2, 2000*

LOCAL GOVERNMENT IMMUNITY

Question: 1. Would a local government lose its immunity if it charged a fee when performing a governmental function?

2. Could a home rule jurisdiction waive its immunity?

Answer: 1. The mere charging of a fee does not deprive a local government of its immunity, unless the resulting revenue substantially exceeds expenses.

2. Charter counties can waive their immunity for governmental functions, and municipalities may have similar authority to waive their immunity.

*Letter to
Del. Kenneth D. Schisler
February 23, 2000*

MINORITY BUSINESS ENTERPRISE PROGRAM

Question: SB 808, as amended, would extend the minority business enterprise program for one year, pending completion of a new study, and would lower the threshold at which a transportation contract for architectural and engineering services, or for construction services, is subject to requirements concerning competitive bidding and minority participation. Does the bill meet constitutional standards?

Answer: Yes.

*Letter to
Sen. Nancy Jacobs
March 21, 2000*

MOTOR VEHICLE LAWS

Question: May an off-duty police officer, while outside the officer's jurisdiction, arrest a person for driving while intoxicated in the officer's presence?

Answer: If the officer does not purport to act in an official capacity, the officer retains authority to make a valid citizen's arrest for a DWI violation. However, under Article 27, §594B, as construed in a recent Court of Appeals decision, an officer in uniform on active duty may not make a warrantless arrest of a suspected drunk driver outside the officer's jurisdiction.

*Letter to
David P. Daggett
February 18, 2000*

NEWSPAPERS

Question: Must a newspaper have some specific minimum circulation to qualify as a newspaper in general circulation?

Answer: Article 1, §28 sets forth the criteria for a “newspaper in general circulation,” but does not require any specific number of readers.

*Letter to
Del. Mark K. Shriver
February 16, 2000*

OPEN MEETINGS

Question: Is an organization that is exempt from taxation under 26 U.S.C. §501(c)(3), and that receives public funds, subject to the State Open Meetings Law?

Answer: A tax-exempt organization that is not created by formal government action is not a “public body” subject to the Open Meetings Law.

*Letter to
Del. David R. Brinkley
February 11, 2000*

PUBLIC OFFICERS

Question: Is a member of the Board of License Commissioners for Baltimore City subject to removal by reason of recent criminal convictions unrelated to the performance of official duties?

Answer: Although recently convicted, the member is not subject to

automatic removal by operation of law. The Governor has no power to remove the member under Article 2B, §15-110, the statute that specifically governs removal of members of a liquor board, because grounds for removal under that statute are limited to misconduct in office. Although the member may be subject to removal by the Governor in the exercise of the Governor's removal power under the Constitution, or by the General Assembly through impeachment, there are no appellate court or legislative precedents that support this view.

*Letter to
Sen. Joan Carter Conway
February 18, 2000*

SOCIAL WORKERS ACT

Question: Would HB 886, "Maryland Social Workers Act) Revision," expand the scope of practice of social workers?

Answer: While the matter is not free from doubt, the bill's definition of the practice of social work by a "certified social worker- clinical" includes "additional methods and procedures for which the social worker has received specialized training and demonstrated competence to perform." This language might expand the existing scope of practice. However, the Act's definition of "biopsychosocial"

functioning of individuals and groups should not be read to permit a social worker to treat medical conditions that are outside the current scope of practice.

*Letter to
Del. Ronald A. Guns
March 9, 2000*

TAXATION

Question: Is the fire tax in Howard County federally tax-deductible?

Answer: The deductibility of the tax is governed by the Federal Internal Revenue Code rather than by State law; only the Internal Revenue Service can render authoritative rulings on questions of federal income tax law.

*Letter to
Del. Shane Pendergrass
March 23, 2000*

TOBACCO MINORS

Question: May State or local officials conduct undercover investigations, in which minors seek to purchase cigarettes, to identify violators of the law prohibiting sale of cigarettes to minors?

Answer: The law does not prohibit the use of minors in this kind of sting operation. Under Article 27, §406(a)(1), which provides that a minor may not possess any tobacco product or cigarette rolling papers unless acting as an agent of the minor's employer, the definition of "employer" is broad enough to include the State or local official who supervises a minor in a sting operation.

*Letter to
Del. Samuel I. Rosenberg
March 1, 2000*

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